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8 **UNITED STATES BANKRUPTCY COURT**

9 **EASTERN DISTRICT OF CALIFORNIA**

10 **FRESNO DIVISION**

11 In re:

12 ENNIS HOMES, INC.,

13 Debtor-in-Possession.

Case No. 09-10848-A-11

Chapter 11

DC No. KDG-51

Date: April 23, 2010

Time: 11:00 a.m.

Place: United States Bankruptcy Court

2500 Tulare Street, Dept. A

Courtroom 11, 5<sup>th</sup> Floor

Fresno, California

Judge: Honorable Whitney Rimel

18  
19 **MOTION FOR AUTHORITY TO SELL REAL**  
20 **PROPERTY FREE AND CLEAR OF LIENS**  
(11 U.S.C. Section 363(f))

21 Ennis Homes, Inc. ("Debtor") respectfully represents:

22 1. Debtor filed a Voluntary Petition under Chapter 11 of the Bankruptcy Code on  
23 February 2, 2009. No trustee has been sought or appointed in Debtor's Chapter 11 case and  
24 Debtor is a Debtor-in-Possession.

25 2. Debtor's primary business is building and selling single-family, residential  
26 homes. Debtor owns and has built a residential home located on Lot 45 of Phase 1 the Arbor  
27 Park development in Kings County, commonly known as 1141 West Canyon Way, Hanford,  
28 California ("the Property"). The sale contemplated by this Motion is in the ordinary course of

1 the Debtor's business, it cannot be consummated without an order of the Court. A legal  
2 description of the Property is attached as Exhibit "A" to the Exhibits in Support of Motion for  
3 Authority to Sell Real Property Free and Clear of Liens filed herewith ("the Exhibits").

4 3. Debtor has contracted to sell the Property to Michael and Geana Maciel  
5 ("Buyers") for \$169,449.00. Notwithstanding the contracted sale price, Debtor seeks authority  
6 to sell the Property to the Buyers for less than the contracted price, if the appraised value, as  
7 determined by the Buyer's lender for the Property, is less than the contracted price. In that  
8 event, the sales price will be within eight percent of the appraised value. Debtor has no  
9 connection with Buyers or persons related to Buyers and Buyers are "disinterested persons" as  
10 defined in 11 U.S.C. Section 101.

11 4. The offer received from the Buyers was obtained with the assistance of a real  
12 estate broker employed by Buyers and is subject to a broker's commission. Debtor does not  
13 believe that anyone will object to the payment of a real estate brokerage commission from  
14 proceeds received from the sale of the Property. The broker's commissions will be paid solely  
15 from the proceeds of the sale.

16 5. The Property is subject to liens of record as follows:

Lienholder	Amount of Lien	Instrument	Date
Kings County Tax Collector	\$551.93	Real Property Taxes	2008-2009

19 In addition to the liens listed above Debtor granted, and the Court ordered that Wells Fargo  
20 Bank, Valley Business Bank, and Tri-Counties Bank received replacement liens in Debtor's  
21 real property other than the real property that is subject to previously existing Wells Fargo  
22 Bank liens. See Orders Granting Motions for Use of Cash Collateral entered on April 2, 2009,  
23 May 13, 2009, August 12, 2009, September 27, 2009, December 4, 2009 and March 3, 2010.

24 6. Proceeds received from the sale of the Property will be distributed as follows:  
25 a. Payment of the usual costs of sale associated with the property sold,  
26 b. Payment of property taxes and irrigation district assessments against the  
27 property sold, and  
28

1 c. Payment of the remaining proceeds to Debtor to be deposited in the  
2 Debtor-in-Possession bank account to be used by Debtor in the ordinary  
3 course of business according to the Orders Authorizing Use of Cash  
4 Collateral entered by the Court.

5 7. Proceeds received from the sale of the Property will not be sufficient to pay all  
6 of the debts secured by the Property. The Kings County Tax Collector will release its lien  
7 against the Property because the property taxes will be paid in full. Debtor believes that Wells  
8 Fargo Bank, Valley Business Bank, and Tri-Counties Bank will release their liens against the  
9 Property as long as the proceeds are used in accordance with further court orders allowing use  
10 of cash collateral.

11  
12 **Argument**

13 8. Debtor requests authority to sell the Property as described above free and clear  
14 of liens, claims, and encumbrances under 11 U.S.C. Sections 363(f)(2).

15 9. Section 363(f)(2) of the Bankruptcy Code permits a sale free and clear of an  
16 interest if "such entity consents". Any secured creditor that does not oppose this motion will be  
17 deemed to consent to the sale of the Property. Therefore, the Property can be sold free and  
18 clear of liens held by creditors that do not oppose this motion.

19 10. Bankruptcy Rule 6004(h) provides that an order authorizing the sale of property  
20 is stayed until the expiration of fourteen (14) days after entry of the order, *unless* the court  
21 orders otherwise (emphasis added). Debtor believes it is necessary for the court to waive the  
22 fourteen day stay due to the immediate need to sell the Property. Debtor believes that waiting  
23 for an additional fourteen days after the entry of the order would deter the Buyers from  
24 purchasing the Property, as escrow is currently set to close on April 30, 2010. Therefore, the  
25 Debtor requests that the fourteen day stay period be waived.

1 WHEREFORE, Debtor prays that:

- 2 1. The Motion for Authority to Sell of Real Property Free and Clear of Liens be  
3 granted;
- 4 2. Debtor be permitted to sell the Property to the Buyers for (a) the contracted price  
5 or (b) within eight percent of the appraised value, as determined by the Buyer's lender, if the  
6 appraised value is less than the contracted price; provided, however, that the ultimate sales  
7 price will be subject to the approval of the lender holding the deed of trust against the Property;
- 8 3. Sale of the Property be free and clear of all liens, claims, and encumbrances;
- 9 4. Debtor be authorized to execute any and all documents required to effectuate the  
10 sale of the Property;
- 11 5. The escrow company be permitted to distribute proceeds received from the sale  
12 of the Property as described herein including:
- 13 a. Payment of the usual costs of sale associated with the property sold,  
14 b. Payment of property taxes assessed against the property sold, and  
15 c. Payment of the remaining proceeds to Debtor to be deposited in the  
16 Debtor-in-Possession bank account.
- 17 6. The fourteen day period provided for by Bankruptcy Rule 6004(h) be waived;  
18 and
- 19 7. Debtor be given such other relief as the Court deems to be just and proper.

20 Date: March 26, 2010

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23 By 

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